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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/037,499      | 01/02/2002  | Brant L. Candalore   | SNY-R4646.04        | 6277             |

24337 7590 01/11/2006

MILLER PATENT SERVICES  
2500 DOCKERY LANE  
RALEIGH, NC 27606

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| EXAMINER |
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SONG, HOSUK

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| ART UNIT | PAPER NUMBER |
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2135

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                 |                  |  |
|------------------------------|-----------------|------------------|--|
| <b>Office Action Summary</b> | Application No. | Applicant(s)     |  |
|                              | 10/037,499      | CANDELORE ET AL. |  |
|                              | Examiner        | Art Unit         |  |
|                              | Hosuk Song      | 2135             |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-101 is/are pending in the application.
- 4a) Of the above claim(s) 40-97 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-39 and 98-101 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/037499</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. In response to restriction requirement, Applicant elected the invention of Group I consisting of claims 1-39,98-101 without traverse.

#### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-22,24-39,98-101 are rejected under 35 U.S.C. 102(e) as being anticipated by Herley et al(US 6,976,166).

Claim 1: Herley disclose a plurality of encrypted samples of the television program, the samples being encrypted under a first encryption method in (col.3,lines 1-6,24-29). Herley disclose a duplicate of the plurality of encrypted samples of the television program, the duplicate of the plurality of encrypted samples being under a second encryption method and an unencrypted portion in (fig.2 and col.3,lines 1-6,24-29).

Claim 2: Herley disclose digital television signal wherein the encrypted samples and duplicate encrypted samples comprise encrypted packets and the unencrypted portion comprises unencrypted packets in (col.4,lines 3-9).

Claims 3-5: Herley disclose digital television signal complies with an MPEG standard,wherein the encrypted packets are identified by a first and second packet identifier,

wherein the first packet identifier identifies the packets containing the encrypted samples and wherein the second packet identifier identifies the packets containing the duplicate encrypted samples in (fig.2 and col.3,lines 1-6,24-29;col.4,lines 51-53).

Claim 6: Herley disclose a plurality of unencrypted packets and a plurality of multiple encrypted packets, wherein the multiple encrypted packets comprise first encrypted packets encrypted under a first encryption method and second encrypted packets encrypted under a second encryption method and wherein both the unencrypted and the multiple encrypted packets are required to decode the television signal in (col.3,lines 1-6,24-29 and fig.2 and col.3,lines 1-6,24-29;col.6,lines 11-13).

Claim 7: Herley disclose unencrypted packets and multiple encrypted packets comprise transport stream packets in (fig.2 and col.4,lines 51-53).

Claims 8-9: Herley disclose digital television signal complies with an MPEG standard and wherein the encrypted and unencrypted packets are identified by a packet identifier in (fig.2 and col.3,lines 1-6,24-29;col.4,lines 51-53;col6,lines 11-13).

Claim 10: Herley disclose identifying a portion of the content to encrypt according to a selection algorithm where less than 100% of the content is encrypted in (fig.2). Herley disclose encrypting the identified content portion according to a first encryption method to produce a first encrypted content portion in (fig.2). Herley disclose encrypting the identified content according to a second encryption method to produce a second encrypted content portion and combining an unencrypted content portion along with the first and second encrypted content portions to produce partially multiple encrypted content in (fig.2 and col.3,lines 1-6,24-29).

Claim 11: Herley disclose content comprises a digital video signal in (col.3,lines 1-6).

Claim 12: Herley disclose distributing the unencrypted content portion along with the first and second encrypted content portions in (fig.2).

Claim 13: Herley disclose a television signal and the partially multiple encrypted content comprises a partially multiple encrypted television signal in (col.6,lines 8-14 and fig.2).

Claim 14: Herley disclose distributing the partially multiple encrypted content comprises a partially multiple encrypted television signal in (fig.2 and col.6,lines 11-13).

Claim 15: Herley disclose television signal ahs an audio portion,video portion and a system information portion in (col.3,lines 1-6 and col.6,lines 8-14).

Claim 16: Herley disclose selection algorithm comprises selecting system information for encrypting in (col.3,lines 24-32).

Claims 17,18: Herley disclose selection algorithm comprises selecting the audio portion for encrypting in (col.3,lines 1-6).

Claims 19-22,24-29: Herley disclose sequentially selecting each program for a period of time for encryption in (fig.2).

Claim 30: Herley disclose encrypting content according to a first encryption method and a second encryption method to produce a first encrypted content portion and a second encrypted content portion and combining the first encrypted content portion and the second encrypted content portion with an unencrypted content portion to produce multiple partially encrypted content in (col.3,lines 1-6,24-29 and fig.2).

Claim 31: Herley disclose multiple partially encrypted content comprises a television signal in (col.6,lines 8-14 and fig.2).

Claims 32,33: Herley disclose multiple partially encrypted television signal is distributed over one of the following system, a terrestrial broadcast system,satellite system, and as packaged media in (col.6,lines 8-14).

Claim 34: Herley disclose encrypting the first replicated identified portion using a first encryption algorithm in (col.3,lines 21-29).

Claim 35: Herley disclose encrypting the second replicated identified portion using a second encryption algorithm in (col.3,lines 21-29).

Claim 36: Herley disclose combining the unencrypted portion with the encrypted first replicated portion and the encrypted second replicated portion to produce multiple partially encrypted content in (fig.2 and col.3,lines 21-29).

Claim 37: Herley disclose multiple partially encrypted television signal is distributed over one of the following system, a terrestrial broadcast system,satellite system, and as packaged media in (col.6,lines 8-14).

Claim 38: Herley disclose assigning a separate packet identifier(PID) to packets containing each of the unencrypted content, the encrypted first replicated identified portion and the encrypted second replicated portion in (fig.4,5).

Claim 39: Herley disclose content comprises television content in (col.6,lines 11-13).

Claim 98: Herley disclose a first plurality of unencrypted packets; a second plurality of packets encrypted under a first encryption method; a third plurality of packets encrypted under the first and second encryption methods are duplicated packets and wherein the packets are selected for encryption using a selection criterion in (col.3,lines 1-6,21-29;col.4,lines 3-6).

Claim 99: Herley disclose digital television signal comprises MPEG compliant digital television signal in (col.4,lines 51-53).

Claim 100: Herley disclose first plurality of unencrypted packets and the second plurality of encrypted packets are identified by a first packet identifier in (fig.3,4 and col.3,lines 21-29).

Claim 101: Herley disclose second plurality of encrypted packets are identified by a second packet identifier in (fig.3,4 and col.3,lines 21-29).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herley et al(US6,976,166).

Claim 23: Herley does not specifically disclose content is comprised of compressed data, wherein the algorithm comprises selection of data needed for decompressing the content for encrypting. Examiner takes official notice that compressing data is well known in the art. One of ordinary skill in the art would have been motivated to employ compression scheme for fast data content delivery and save storage space.

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-39,98-101 are provisionally rejected on the ground of nonstatutory double patenting over claims 1-14,19-30,90-110 of copending Application No. 10/038032. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.




***USPTO Contact Information***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hosuk Song whose telephone number is 571-272-3857. The examiner can normally be reached on Tue-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Vu can be reached on 571-272-3859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Hosuk Song  
Primary Examiner  
Art Unit 2135